IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 450 of 2007()

CC.841/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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PETITIONER: ACCUSED.

GEETHA MOHANKUMAR, AGED 41 YEARS,
W/O.K.MOHANKUMAR, KAILAS, VELAMPARAMBU ROAD,
SUVARNA NAGAR, EROOR (W), THRIPUNITHURA.

BY ADV. SRI.C.T.JESTIN

RESPONDENTS: COMPLAINANT.

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1. STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, CITY TRAFFIC POLICE,
KOCHI.

2. THE MANAGER, STATE BANK OF INDIA,
EDAMUTTOM BRANCH, EDAMUTTOM-680 568,
THIRISSUR DISTRICT.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 450 of 2007

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Dated this the 21st day of February, 2007

O R D E R

The petitioner, a woman, faces indictment in a prosecution for the offence punishable under Section 138 of the N.I. Act. The petitioner has not appeared before the learned Magistrate so far. On coming to know of the pendency of the prosecution under Section 138 of the Act, she has rushed to this Court with this petition under Section 482 Cr.P.C. She prays that the prosecution initiated against her may be quashed.

2. What is the reason? The learned counsel for the petitioner submits that subsequently the payee bank has taken steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security and Interest Act and the property is now in the possession of the bank.

3. How can that be a valid ground to invoke the powers under Section 482 Cr.P.C. and quash the proceedings? The learned counsel for the petitioner submits that the cheque cannot be held to be negotiable now as the complainant/payee had already taken steps

under the Securitisation Act. I am unable to accept this contention at all. Even if the amounts were paid later after the elapse of 15 days, the offence under Section 138 will continue to remain and quashing of proceedings will not be justified. Subsequent payment or attachment of the property for enforcement of the liability or initiation of proceedings under the Securitisation Act or any other more expedient procedure will not by itself obliterate the culpable liability under Section 138 of the N.I. Act. In these circumstances I do not find any merit in the prayer for quashing of the proceedings. This Crl.M.C. deserves to be dismissed.

4. The learned counsel for the petitioner submits that the petitioner, a woman, will be subjected to undeserved trauma of appearing before a criminal court on all dates of posting. The offence is a summons offence. The petitioner is a woman. I find no reason whatsoever from the facts placed before me as to why personal appearance of the petitioner must be insisted by the learned Magistrate. The petitioner can certainly apply for exemption and needless to say, the learned Magistrate must consider the same on merits. Only if absolutely essential, personal presence of the petitioner must be insisted.

5. With the above observations this Crl.M.C. is dismissed. I make it clear that I have no intended to express any opinion on merits on the acceptability of rival contentions. I have only chosen to hold that powers under Section 482 Cr.P.C. do not deserve to be invoked. The dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all appropriate and necessary contentions before the learned Magistrate.

(R. BASANT)
Judge

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